

**33-24-08-36. Applicability (delivery prohibition).**

1. Tank owners and operators and product deliverers are responsible for ensuring that product is not delivered, deposited, or accepted into an underground storage tank identified by the department as ineligible to receive product.
2. For purposes of this section the term "underground storage tank" means those tanks that satisfy the definition of petroleum underground storage tank system in section 33-24-08-03, except for those tanks identified as excluded or deferred storage tanks.

**History:** Effective January 1, 2009.

**General Authority:** NDCC 23-20.3-03, 23-20.3-04.1

**Law Implemented:** NDCC 23-20.3-04.1

**33-24-08-37. Criteria for delivery prohibition.**

1. An underground storage tank shall be classified as ineligible for delivery, deposit, or acceptance of product upon determination by the department that the underground storage tank meets one or more of the following conditions:
  - a. Spill prevention equipment as required by this chapter is not installed;
  - b. Overfill protection equipment as required by this chapter is not installed;
  - c. Leak detection equipment as required by this chapter is not installed;
  - d. Corrosion protection equipment as required by this chapter is not installed; or
  - e. Other conditions which the department determines may present an imminent and substantial endangerment to public health and the environment.
2. The department may also classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product if the owner or

operator of that tank has been issued a written warning or citation (for example, field citation, warning letter, notice of violation), and has failed to take corrective action, within a reasonable period of time determined by the department, under any of the following circumstances:

- a. Failure to properly operate or maintain leak detection equipment;
- b. Failure to properly operate or maintain spill, overfill, or corrosion protection equipment;
- c. Failure to maintain financial responsibility;
- d. Failure to protect a buried metal flexible connector from corrosion;

or

e. Other conditions which the department determines may present an imminent and substantial endangerment to public health and the environment.

3. The department shall retain the discretion to decide whether to identify an underground storage tank as ineligible to deliver, deposit, or accept product based on whether the prohibition is in the best interest of the public. In those cases where prohibition of delivery, deposit, or acceptance of product to an underground storage tank is not in the best interest of the public (for example, certain emergency generator underground storage tanks), the department may classify an underground storage tank as ineligible to receive product but authorize an emergency delivery.

4. The department may also consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of product if such treatment would jeopardize the availability of, or access to, motor fuel in any rural and remote areas. The department shall only defer application of delivery prohibition for up to one hundred eighty days after determining an underground storage tank is ineligible for delivery, deposit, or acceptance of product.

**History:** Effective January 1, 2009.

**General Authority:** NDCC 23-20.3-03, 23-20.3-04.1

**Law Implemented:** NDCC 23-20.3-04.1

**33-24-08-38. Mechanisms for designating tanks ineligible for delivery.**

1. Upon identifying an underground storage tank as ineligible for delivery, deposit, or acceptance of product, the department shall notify tank owners or operators in writing (for example, field notification or mail) prior to prohibiting the delivery, deposit, or acceptance of product into the ineligible tank.
2. After reasonable effort is made to notify the underground storage tank owner or operator in writing, the department may affix a "red tag" to the fill pipe of the noncompliant underground storage tank system using a tamper-resistant strap or straps, fill pipe bag, or any combination thereof so that the tag clearly identifies the tank as ineligible to receive product.
3. The department shall develop a process and procedure for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. Notice shall be made available (for example, electronic listing) to product deliverers within twenty-four hours of an underground storage tank being identified as ineligible to receive product.

**History:** Effective January 1, 2009.

**General Authority:** NDCC 23-20.3-03, 23-20.3-04.1

**Law Implemented:** NDCC 23-20.3-04.1

**33-24-08-39. Reclassifying ineligible tanks as eligible for delivery.**

1. Upon notification by the owner or operator that the violation or violations has or have been corrected, the department shall confirm compliance.
2. The department shall reclassify an ineligible underground storage tank as eligible to receive product the same day the department confirms that the underground storage tank has been returned to compliance. Likewise, notice shall be made available to product deliverers the same day an ineligible tank has been reclassified as eligible to receive

product.

**History:** Effective January 1, 2009.

**General Authority:** NDCC 23-20.3-03, 23-20.3-04.1

**Law Implemented:** NDCC 23-20.3-04.1